

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* AURELIA MAZA, THADDEUS RUSSELL ZIEGERT, JAMES D. BENSEMA,  
and CHRISTOPHER E. LANGBEIN

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Appeal No. 2004-2015  
Application No. 09/800,547

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ON BRIEF

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Before KRATZ, TIMM, and PAWLIKOWSKI, *Administrative Patent Judges*.  
TIMM, *Administrative Patent Judge*.

***DECISION ON APPEAL***

This appeal involves claims 1-27 as amended after the Final Rejection. Claims 1-27 are all of the claims pending in this application. We have jurisdiction pursuant to 35 U.S.C. § 134.

### ***INTRODUCTION***

The claims are rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner relies upon the following prior art references:

Trainor et al. (Trainor)	4,423,084	Dec. 27, 1983
Ross	5,632,596	May 27, 1997

The specific rejection maintained by the Examiner is as follows: Claims 1-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Trainor in view of Ross (Answer, p. 4).

Appellants state that claims 1-27 stand or fall together (Brief, p. 7). Appellants and the Examiner focus on claim 1 which is directed to a process for making a dressing. We will select claim 1 to represent the issues on appeal.<sup>1</sup>

Claim 1 reads as follows:

1. A process for making a dressing comprising the steps of:

(a) combining raw ingredients in a pre-mix tank comprising a means for mixing to form a coarse emulsion, and

(b) processing the coarse emulsion in one pass through an in-line mixer/emulsifier comprising at least one set of stator and rotor, and a variable speed motor to drive the rotor, wherein the stator and rotor comprise co-axially engageable rings of teeth having a plurality of concentric vanes and concentric wells with generally slanted side walls from each vane to each well and the rotor and stator when engaged are such that the concentric vanes of the stator align with the corresponding concentric wells of the rotor and the concentric vanes of the rotor align

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<sup>1</sup>We are cognizant of the fact that claim 22 is not subsumed within the scope of claim 1: Claim 22 is directed to a product, not a process. However, our selection of claim 22 would not change the outcome of our decision. Therefore, we choose to select claim 1, the claim addressed and argued by Appellants, as representative of the issues on appeal.

with the corresponding concentric wells of the stator with the corresponding generally slanted walls of the stator and rotor aligned and when engaged a gap having an axial opening dimension and slanted opening dimension is defined by each concentric vane and each concentric well and the aligned slanted walls and the gap is adjustable in increments of about 0.015 inches in axial opening dimension wherein the dressing is mayonnaise or a salad dressing and an oil phase and an emulsifier phase are raw ingredients combined in the pre-mix tank.

We affirm substantially for the reasons advanced by the Examiner (Answer, pp. 4-6). We add the following primarily for emphasis.

### ***OPINION***

Appellants convince us of no reversible error in the rejection of the Examiner. Trainor, as set forth by the Examiner, describes mixing an oil phase and an emulsifier phase in a premix tank (Trainor, Fig. 1, step 2; col. 5, l. 54 to col. 6, l. 18). Trainor, further in accordance with the findings of the Examiner, processes the coarse emulsion (dressing base) in a colloid mill (Trainor, Fig. 1, step 3; col. 6, ll. 19-20). The mill has a rotor and stator which is adjustable (Trainor, col. 6, ll. 27-30). The dressing base is described as being pumped directly to a clean mixer from the mill (Trainor, col. 6, ll. 30-32). The Examiner acknowledges that Trainor does not describe the specific apparatus features of the colloid mill. In such a situation, one of ordinary skill in the art would have looked to conventional rotor and stator mills and the Examiner provides evidence, i.e., Ross, that the rotor and stator apparatus of the claim was

known in the art for mixing and emulsifying foods. Under the circumstances, the prior art provides a road map for combining the teachings of the references so as to meet the requirements of claim 1.

Appellants argue that Trainor “does not teach, suggest, or disclose, for example, the steps of forming a premix of raw ingredients which include an oil phase and an emulsifier phase to make a coarse emulsion to be fed in One Pass to an in-line mixer/emulsifier having a specific stator and rotor arrangement, as claimed.” (Brief, pp. 9-10). Judging from the underlining in Appellants’ statement of the argument, the focus of this argument is on the “one pass” aspect of the mixing in the mill. As pointed out by the Examiner, there is no suggestion in Trainor that multiple passes occur in the mill. Trainor pumps the dressing base to the colloid mill and then pumps the dressing base to a clean mixer (Trainor, col. 6, ll. 19-20 and 30-32). One of ordinary skill in the art would interpret Trainor as describing a one pass operation.

With regard to the specific stator and rotor arrangement, as pointed out by the Examiner (Answer, p. 6), the Ross rotor and stator is the same rotor and stator used by Appellant (specification, p. 7, ll. 10-12; p. 9, ll. 14-17). The rotor and stator of Ross clearly has the structure required by claim 1.

Appellants argue that Trainor does not teach the specific oil amounts, additives and emulsifier amounts set forth in the presently claimed invention (Brief, p. 10). Appellants further argue that Trainor does not disclose rotor and stator diameters, critical rotor speeds, tip speeds, or

throughput rates (Brief, p. 10). None of these parameters represent a requirement in the process of claim 1.

Appellants further argue that Trainor fails to teach the claimed gap adjustability. But Trainor indicates that the rotor and stator are adjustable (Trainor, col. 6, ll. 27-29). Moreover, the fact that the gap is adjustable in particular increments does not translate into a limitation on the process. There is no affirmative requirement that the gap be so adjusted.

With regard to Ross, Appellants merely argue, in essence, that this reference does not describe the process of the claim (Brief, p. 10). That argument is not persuasive because it does not address the capacity in which the references were applied. The Examiner applied Trainor to show that a process of making dressing by mixing an oil and an aqueous emulsifier phase in a pre-mix tank followed by passing the emulsion through a stator and rotor type in-line mixer was known in the art. The Examiner then provided evidence that the specifics of the stator and rotor apparatus were also known in the art. The Examiner also provided a reason why one of ordinary skill in the art would have used the conventional rotor and stator apparatus known in the art in the process of Trainor and concluded that the process of claim 1 would have been obvious to one of ordinary skill in the art. Such a rationale supports a conclusion of obviousness. Appellants have not convinced us of any factual or legal error on the part of the Examiner.

As a final point, we note that Appellants base no arguments upon objective evidence of non-obviousness such as unexpected results. We conclude that the Examiner has established a

*prima facie* case of obviousness with respect to the subject matter of claims 1-27 which has not been sufficiently rebutted by Appellant.

***CONCLUSION***

To summarize, the decision of the Examiner to reject claims 1-27 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

PETER F. KRATZ  
Administrative Patent Judge

CATHERINE TIMM  
Administrative Patent Judge

BEVERLY A. PAWLIKOWSKI  
Administrative Patent Judge

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